

**Central Administrative Tribunal
Kolkata Bench, Kolkata**

O.A. No.553/2013

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Wednesday, this the 12th day of June 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Dr. Nandita Chatterjee, Member (A)**

Asit Baram Mondal son of late Shri Golak Chandra Mondal
Working as Postal Assistant Durgapur HO
(now under order of dismissal from service)
Residing at Vill & Post Baktarnagar, Distt. Burdwan

..Applicant

(Mr. A Chakraborty and Ms. T Das, Advocates)

Versus

1. Union of India through the Secretary
Department of Posts, Dak Bhawan
New Delhi – 110 001
2. The Director of Postal Services, South Bengal Region
Yogayoga Bhawan, C R Avenue
Kolkata – 700012
3. The Sr. Superintendent of Posts,
Asansol Dn., PO Asansol – 713301
Dt. Burdwan

..Respondents

(Ms. R Basu, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

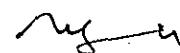
The applicant was working as Assistant Treasurer (Cash) in Raniganj Head Office for a period of one year between 2001 and 2002. He was issued a charge memo dated 04.06.2009 alleging that he did not follow the prescribed procedure in the context of making the remittances and maintaining cash particulars, and

[Signature]

that he did not correctly disclose his assets. The applicant submitted his explanation, and not being satisfied with that, the disciplinary appointed the inquiry officer. A report was submitted by the inquiry officer, holding that there were some lapses on the part of the applicant, but they cannot be construed as acts of misconduct. The disciplinary authority disagreed with the findings of the inquiry officer and issued a disagreement note. After taking into account, the explanation submitted by the applicant to the disagreement note, the disciplinary authority passed order dated 14.11.2011 imposing the punishment of dismissal from service. Appeal preferred by the applicant on 08.12.2011 was rejected by the appellate authority, through an order dated 15.06.2012. Hence, this O.A.

2. The applicant contends that he worked for a very brief period at Raniganj Head Office and the allegations made against him with reference to that, are very trivial and non-serious in nature. He contends that except mentioning that certain entries were not made in accordance with the prescribed procedure, it was not alleged either that he has misappropriated any amount or that the department suffered any loss. He further contends that minor discrepancies in the context of furnishing the list of properties were blown out of proportion.

3. Another contention of the applicant is that the disciplinary authority disagreed with the conclusion of the inquiry officer without any basis and imposed the punishment, which is

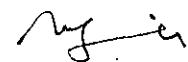


totally disproportionate to the allegations contained in the charge memo.

4. The respondents filed counter affidavit opposing the O.A. It is stated that the large scale irregularities were noticed in the Raniganj Head Office and inquiry revealed that several employees have deviated from the prescribed procedure and caused huge loss to the Government. It is stated that the applicant was found to have deviated from the prescribed procedure and failed to reveal the assets held by him and his family. The respondents further stated that the conclusions arrived at by the inquiry officer were contrary to the evidence on record, and accordingly, the disciplinary authority issued a disagreement note and ultimately ordered dismissal from service. As regards the proportionality, it is stated that the punishment is commensurate with the gravity of charges.

5. We heard Mr. A Chakraborty, learned counsel for applicant and Ms. R Basu, learned counsel for respondents, at length.

6. The applicant worked in the Raniganj Head Office for a period of one year. It appears that there large scale of irregularities in that office and the proceedings were initiated against many employees. This, however, is not a case pertaining to those large scale violations. The allegations against the applicant are contained in two articles of charge and they read as under:-



“Article I

It is alleged that Sri Asit Baran Mondal while working as Assistant Treasurer (Cash), Raniganj, H.O for the period from December 2001 to 14/12/2002 maintained a separate Cash Book and showed to have made over cash to counter PA's without acquaintance. On 09/05/2002 he showed to have been made over cash to Sri Salil Chowdhury Rs.976160/-, Sri Banerjee Rs.76000/- and Sri Goutam Banerjee Rs.490000/-. On 10/05/2002 he showed to have been made over cash to Sri Salil Chowdhury Rs.946300/-, Sri Goutam Banerjee Rs.880000/- and Sri Shyamal Mondal Rs.86000. Thus he is alleged to have acted in contravention of Rule 31 of Postal Financial Hand Book, Vol-II, 2nd Edition and thereby violated Rule 3 (1) (i), 3 (1) (ii) & 3 (1) (iii) of CCS (Conduct) Rules, 1964.

Article II

It is alleged that Sri Asit Baran Mondal while working as PA, Bidhan Bag S.O for the period January 2006 to April 2006, did not furnish the particulars of all movable and immovable properties in his name and in the name of his family members as called for vide Divisional office letter no. Fd/KVP/RNG HO dated 15/03/2006. Thus he is alleged to have acted in contravention of Rule 18 (4) of CCS (Conduct) Rules and thereby violated Rule 3 (1) (i), 3 (1) (ii) & 3 (1) (iii) of CCS (Conduct) Rules, 1964.”

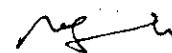
7. The applicant submitted his explanation denying the allegations. However, he admitted that there were some lapses in the context of following the prescribed procedure. In his report, the inquiry officer observed that the allegation that the applicant did not follow the prescribed procedure is true, but has taken the view that the said violations cannot be treated as acts of misconduct. The disciplinary authority, however, disagreed with the conclusions of the inquiry officer, by issuing a disagreement note. Though it is pleaded that the disagreement note is not accordance with law, we are not convinced with the same. The disciplinary authority has not only issued a tentative note, but also



furnished cogent reasons. It is only after considering the explanation submitted by the applicant, that it has taken a final decision to disagree with the conclusions. It is a different matter that one may disagree with the conclusions arrived at by the disciplinary authority. He followed the procedure.

8. What, however, is evident from the record is that in article 1, the applicant is alleged to have failed to follow the prescribed procedure, but there is no allegation either that he has misappropriated the amount or that the Government has suffered any loss on account of such lapses. It is only when the concerned employee has deviated from the prescribed procedure, with an intention to misappropriate the amount, the occasion to impose the major penalty would arise. Mere deviation from procedure should not lead to the imposition of major penalty of dismissal.

9. Similarly, if, in fact, the applicant is guilty of holding any assets disproportionate to his known source of income, the authorities are required to be initiated under the relevant provisions of law, namely, Prevention of Corruption Act, 1988. It is a matter of record that the applicant did not figure as an accused in any of the criminal case(s) initiated against the employees, who were working at Raniganj Head Office. Here again, the failure to mention certain items in the declaration should not lead to the imposition of penalty of dismissal. The reason is that not only his livelihood but also the livelihood of his family would be taken away. It is only when the charges are very serious in nature and the acts of misconduct, coupled with the



intention to commit fraud on the Government, are clear, that the punishment of that nature can be imposed.

10. We are of the view that the charges, which are held proved against the applicant, do not warrant imposition of penalty of dismissal or removal from service. Instead any other suitable punishment, including the major punishment other than dismissal or removal, can be imposed. This, however, is a matter, which needs to be considered by the disciplinary authority.

11. We, therefore, allow the O.A in party and set aside the impugned orders dated 14.11.2011 passed by the disciplinary authority and 15.06.2012 passed by the appellate authority. We remand the matter back to the disciplinary authority for reconsideration, in the context of imposition of penalty, which, in turn, shall be the one other than dismissal or removal from service. Since the applicant has attained the age of superannuation, the exercise in this behalf shall be completed within a period of two months from the date of receipt of a copy of this order. Depending on the nature of punishment, that is imposed by the disciplinary authority, retirement benefits shall be decided and released to the applicant with the said period.

There shall be no order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

June 12, 2019
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